

MEMO ENDORSED

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March 31, 2020

Judge Denise L. Cote
United States District Court
500 Pearl Street, Room 1910
New York, NY 10007-1312

Re: *Of a Feather, LLC v. Allegro Credit Services, LLC*, Case No. 1:19-cv-9351

Dear Judge Cote:

I represent plaintiff in which defendant's motion to dismiss is pending and, in fact, plaintiff's opposition papers are due tomorrow, April 1.

Today I noticed that yesterday (March 30) defendant filed a new case (*Allegro v. Feather et al.*, 1:20-cv-02664) on the same subject matter as this case here filed last year (1:19-cv-9351). As a result, it is a compulsory counterclaim under Rule 13(a)(1) ("A pleading must state as a counterclaim any claim that ...the pleader has against an opposing party if the claim: (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim"). Failure to plead a compulsory counterclaim bars a party from bringing a later independent action on that claim. *See* Wright & Miller § 1417; Advisory Committee Notes of 1946 Amendment, Subdivision (a).

Because this irregular procedure affects the motion to dismiss – as a pleading this compulsory counterclaim waives Rule 12(b) defenses -- I emailed and called defendant's counsel and suggested that the parties confer and work out an orderly way to proceed. She was receptive but of course must consult her client.

In the meantime, plaintiff requests that the Court extend the time to respond to the motion to dismiss *sine die* while the parties confer.


Respectfully,

/s/ Jared Stamell
Jared Stamell

cc: Elliott McGraw, Esq
Attorney for Defendant

The deadline for plaintiff's opposition to the motion to dismiss is extended to April 3, 2020. Reply due April 17. By April 10, the parties shall submit a status letter concerning the motion to consolidate cases.

April 1, 2020


DENISE COTE
United States District Judge